

4: Social, Economic, and Environmental Effects

Chapter 4.1:

Process, Agency Coordination, and Public Participation

4.1-1 INTRODUCTION

This chapter describes the process and applicable regulatory requirements for implementing the Portageville Bridge Project (the Project); the public agencies with jurisdiction over or input on construction of the Project; and the process to engage public participation related to the Project. Norfolk Southern, as Project sponsor, is seeking funding and other regulatory approvals from the Federal Highway Administration (FHWA) and the New York State Department of Transportation (NYSDOT) for the Project; therefore, this Draft Environmental Impact Statement (DEIS) has been prepared to comply with both the National Environmental Policy Act (NEPA) and the New York State Environmental Quality Review Act (SEQRA).

Based on the proposed funding and regulatory approvals initially anticipated for the Project, a DEIS was previously prepared pursuant to SEQRA, with NYSDOT as the lead agency. The SEQRA DEIS was published in November 2012, with a public review period held from November 26, 2012 through February 1, 2013 and a public hearing in January 2013.¹ Subsequent to that process, federal funding for the Project through the Congestion Mitigation and Air Quality improvement (CMAQ) program was identified, making the Project subject to federal environmental review procedures. FHWA and NYSDOT are the NEPA joint lead agencies and NYSDOT is the SEQRA lead agency for the Project.

Although the previous SEQRA DEIS incorporated components of NEPA to support requirements associated with any federal approvals, and although the NEPA and SEQRA processes are similar, the environmental review process has been reinitiated under NEPA to meet procedural requirements associated with receipt of federal funding. Since the Project has not changed substantially (but has been refined based on public and agency comments), this NEPA DEIS incorporates the analyses from the previous DEIS, as appropriate. The NEPA DEIS also incorporates additional analyses as required by the NEPA process and to comply with other federal procedures. The primary Project refinement presented in this DEIS is that, based on analyses presented in the SEQRA DEIS and input received during the SEQRA public review process, the NEPA scoping process, and during preparation of this NEPA DEIS, Alternative 5—New Bridge on Parallel Alignment/Convey Existing Bridge—was eliminated from further study in this DEIS. As discussed further in Chapter 3, “Project Alternatives,” this DEIS evaluates the No Action Alternative (formerly referred to as Alternative 1) and the Preferred Alternative (formerly known as Alternative 4).

Pursuant to applicable federal law, federally regulated railroads operating in interstate commerce, including Norfolk Southern, are not subject to local and state laws that might

¹ A summary of the comments received on the SEQRA DEIS and responses to those comments is provided on the Project website (www.dot.ny.gov/portagevillebridge).

otherwise apply.² Norfolk Southern intends to voluntarily comply with local and state law where doing so does not compromise railroad operations.

4.1-2 PROCESS

4.1-2-1 National Environmental Policy Act

As noted above, federal approvals are subject to environmental review under NEPA. The procedural provisions of NEPA (set forth in 40 CFR §§ 1500-1508) require federal agencies to consider the environmental impacts of their actions, including not only direct and indirect effects, but also cumulative effects.

The Project is classified as a NEPA Class I project in accordance with 23 CFR § 771.115, which requires an EIS to determine the likely social, economic, and environmental impacts the project will have on the environment, to evaluate reasonable alternatives, and to identify measures to mitigate any adverse impacts. The steps in the NEPA EIS process are as follows:

- **Notice of Intent (NOI).** Publication of the Notice of Intent (NOI) in the Federal Register formally announces the Project and initiates the environmental review process. The NOI for the project was published in the Federal Register on October 31, 2013.
- **Scoping.** The NOI for the Project included a notice of scoping, an initial step in the NEPA process where the public is provided an opportunity to review and comment on the Project's purpose and need, alternatives to be studied in the EIS, and the environmental analysis framework for the EIS. This information, which was developed and refined in consideration of the previous SEQRA DEIS process, was outlined in a Scoping Brochure that was made publicly available in November 2013. A public scoping meeting was held on November 19, 2013, where the public was invited to provide oral or written comments on the scope of the EIS. Written comments were also accepted throughout the public scoping review period, which extended through December 19, 2013. A Final Scoping Report, which summarized the comments received and provided responses as appropriate, was prepared and made available on the Project website (<https://www.dot.ny.gov/Portagevillebridge>).
- **Draft Environmental Impact Statement (DEIS).** Following scoping, this DEIS was prepared to assess the environmental impacts of the Project consistent with NEPA and other applicable regulations and requirements. FHWA approved the DEIS for public circulation on July 21, 2014 with a Notice of Availability in the Federal Register thereafter. The Notice of Availability establishes the public review period for this DEIS.
- **Public Review of the DEIS.** At the start of the public review period of the DEIS, the document was made available for review to government agencies, elected officials, civic and interested groups, and the public. In accordance with NEPA, FHWA has established a 45-day public comment period for the DEIS. A public hearing will be held during the public comment period, and members of the public can offer oral testimony on the findings of the DEIS. Written comments will also be accepted.

² In recognition of the importance of rail transportation to interstate commerce, Congress has enacted legislation providing that federally regulated railroads operating in interstate commerce are not subject to otherwise applicable local and state law and regulation. See Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 USC Section 10501 and the Federal Railway Safety Act of 1976 (FRSA), 49 USC Section 20101 *et seq.* In accordance with these and other similar federal laws, certain state and local regulation of railroads is preempted in order to ensure barriers to interstate commerce are not created. This includes local planning, zoning, and similar local and state laws and ordinances. While Norfolk Southern plans to voluntarily comply with such law when possible, there may be instances where compliance with such law and regulation is not compatible with rail operations and needs.

- ***Final Environmental Impact Statement and Record of Decision (FEIS/ROD).*** After the public comment period on the DEIS closes, a joint FEIS and ROD will be prepared. The FEIS will include a summary of the comments made on the DEIS during the public comment period and responses to those comments, and any necessary revisions to the DEIS to address the comments. Upon issuance of the joint FEIS/ROD, a Notice of Availability will be published in the Federal Register.

In accordance with federal agency coordination procedures, this environmental document may be adopted or used by any federal agency making any approval associated with the Project.

4.1-2-2 New York State Environmental Quality Review Act

In 1975, New York State's legislature enacted SEQRA. This law requires that all New York State and local governmental agencies in New York evaluate significant environmental impacts that would result from their discretionary actions, and identify measures to mitigate adverse impacts. State agencies must review their discretionary actions in accordance with SEQRA, unless such actions fall within certain statutory or regulatory exemptions, before undertaking, funding, or approving the actions.

NYSDOT is serving as the SEQRA lead agency for the Project. NYSDOT's regulations for implementing SEQRA are provided at 17 NYCRR Part 15. In accordance with NYSDOT's SEQRA regulations, the Project is classified as a "non-Type II" action, indicating that its potential for environmental impacts should be evaluated under SEQRA. Therefore, this DEIS is being prepared to meet the requirements of SEQRA. In accordance with 17 NYCRR Part 15, the NEPA and SEQRA processes for the Project are being coordinated; therefore, NYSDOT and other New York State agencies undertaking a discretionary action for this Project have no obligation to prepare a separate EIS under SEQRA. NYSDOT will give full consideration to the federal FEIS and will prepare a ROD in accordance with Section 15.9 of 17 NYCRR Part 15.

4.1-2-3 Other Federal and State Regulatory Requirements

Implementation of the Project will require a number of permits and approvals by federal and state agencies. The following DEIS chapters identify and describe the regulatory requirements pertinent to implementation of the proposed Project. The list below is a summary of the regulatory requirements that may apply to federal and/or state agencies that have jurisdiction over components of the Project.

Federal Regulations

- ***Bald and Golden Eagle Protection Act (16 USC 668-668c):*** The Bald and Golden Eagle Protection Act prohibits anyone without a permit issued by the Secretary of the Interior, acting through the U.S. Fish and Wildlife Service (USFWS), from taking bald or golden eagles, including their parts, nests, or eggs. The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb."
- ***Clean Air Act (42 USC § 7506(c); 40 CFR Part 93).*** The Clean Air Act establishes National Ambient Air Quality Standards and, in accordance with this Act, states that are designated as not meeting one or more of these standards are required to develop and implement a State Implementation Plan (SIP) that delineates how the state plans to achieve attainment. New York State has such a SIP. Projects that will receive federal assistance or funding, or permits from federal agencies must be analyzed for their conformity with the SIP.
- ***Clean Water Act (33 USC §§ 1251-1387).*** The Clean Water Act (CWA), also known as the Federal Water Pollution Control Act, is intended to restore and maintain the chemical, physical, and biological integrity of the waters of the United States. It regulates point sources

of water pollution (i.e., discharges of municipal sewage, industrial wastewater, stormwater); non-point source pollution (i.e., runoff from streets, agricultural fields, construction sites and mining that enter waterbodies, from other than the end of a pipe); and the discharge of dredged or fill material into navigable waters and other waters of the United States. A number of sections of the Clean Water Act are relevant for the Project:

- Under Section 402 of the CWA, stormwater discharges to the waters of the U.S. require authorization by a National Pollutant Discharge Elimination System (NPDES) permit or an authorized state permit program. New York State has established the State Pollutant Discharge Elimination System (SPDES) program for controlling wastewater and stormwater discharges to groundwaters and surface waters, which is an authorized program under the CWA.
 - Section 404 of the CWA governs dredging or fill of the waters of the U.S. This section of the CWA requires authorization from the Secretary of the Army, acting through the U.S. Army Corps of Engineers (USACE), for the discharge of any dredged or fill material into waters of the United States. Based on a Preliminary Jurisdictional Determination issued by the USACE on June 22, 2011 (included in **Appendix A** of this DEIS), a permit from the USACE is required for the filling of a portion of a small wetland (Wetland A) that is needed for the Project. In addition, removal of the piers of the existing bridge from the Genesee River also requires a permit under Section 404.
 - Activities authorized under Section 404 must comply with Section 401 of the CWA, which requires that applicants for federal permits or licenses for an activity that may result in a discharge into navigable waters of the United States must provide certification (either from the state where the discharge would occur or from an interstate water pollution control agency) to the federal agency issuing a permit that the discharge would comply with Sections 301, 302, 303, 306, 307, and 316 (b) of the CWA. However, certain nationwide permits from the USACE do not require Section 401 water quality certifications.
- **Endangered Species Act (16 USC §§ 1531-1544; 50 CFR Part 402).** This act requires federal agencies to consult with the U.S. Fish and Wildlife Service for any actions that may jeopardize threatened or endangered species, or destroy or adversely modify their critical habitats. Thus, federal agencies issuing approvals for the Project must adhere to the requirements of the Endangered Species Act.
 - **Environmental Justice (Executive Order 12898 of 1994, 59 FR 7629, February 16, 1994; U.S. Department of Transportation [USDOT] "Order to Address Environmental Justice in Minority Populations and Low-Income Populations," USDOT Order 5610.(2)(a), May 2, 2012, FHWA Order 6640.23a, "FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", June 14, 2012).** The Executive Order requires that federal agencies consider the effects of their activities on minority and low-income groups, and that minority or low-income areas are not overburdened with the adverse aspects of proposed project alternatives. The federal Council on Environmental Quality has issued guidance to federal agencies on implementing this Executive Order and, consistent with the Executive Order, each federal agency has its own procedures for addressing environmental justice concerns. Federal agencies issuing approvals for the Project must adhere to the requirements of the Executive Order 12898.
 - **Farmland Protection Policy Act (7 USC § 4201):** This federal act is intended to protect designated "prime farmland and farmland of statewide importance" from non-agricultural use as a result of federal actions. Federal agencies with a role in undertaking, financing, or assisting construction improvement projects, or acquiring, managing, or disposing of federal land, must consult with the U.S. Department of Agriculture, National Resource Conservation

Service regarding the effects of their actions on farmland,. The Farmland Protection Policy Act does not apply to privately owned or non-federal land such as railroad right-of-way.

- **Floodplains (Executive Order 11988 of 1977; USDOT Order 5650-2, “Floodplain Management and Protection,” April 23, 1979).** Federal and state agencies must regulate and limit the location of a project in a floodplain to avoid any adverse impacts associated with the occupancy and modification of floodplains.
- **Interstate Commerce Commission Termination Act of 1995 (49 USC § 10501), the Federal Railway Safety Act of 1970 (49 USC § 20101 et seq.) and other applicable federal laws.** As discussed above, Congress has enacted legislation, including those statutes identified, that provides that federally regulated railroads operating in interstate commerce not be subject to local and state law and regulation that present barriers to interstate commerce. Nevertheless, Norfolk Southern has agreed to voluntarily comply with such local and state laws and regulations for the Project as it deems possible to the extent that such compliance is not incompatible with rail operations and needs.
- **Land and Water Conservation Fund Act of 1965 (16 USC § 4601-4 – 4601-11).** The Project would convert property that is currently parkland that received federal funds under the Land and Water Conservation Fund (LWCF) Act to a non-recreational use. Approval by the National Park Service (NPS) is required for the conversion and replacement of parkland subject to this regulation and any NPS approval must be based on a determination that the conversion meets the conditions under Section 6(f).
- **National Historic Preservation Act (16 USC § 470A; 36 CFR Part 800).** Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effects of their undertakings on historic properties. FHWA is responsible for carrying out the Section 106 review for the Project in consultation with the New York State Historic Preservation Officer (SHPO). When a project is being reviewed pursuant to Section 106 of the NHPA (as is the case with this Project), the procedures of Section 14.09 of the New York State Historic Preservation Act do not apply, and any review and comment by SHPO must be within the framework of Section 106 procedures (New York State Historic Preservation Act § 14.09(2)). The Section 106 consultation process for the Project is described below.
- **National Wild and Scenic Rivers Act of 1968 (16 USC §§ 1271-1287) and Genesee River Protection Act of 1989 (16 USC § 1276(a)).** The portion of the Genesee River from the southern boundary of Letchworth State Park to the Mt. Morris Dam was given protection under the National Wild and Scenic Rivers Act by special legislation of the U.S. Congress, the Genesee River Protection Act. Under Section 7 of the National Wild and Scenic Rivers Act, federal agencies with “water resources” projects (defined as those that would affect the free-flowing nature of the river)—including projects that require permits from the USACE—must consult with the river-administering agency regarding effects to rivers that are part of the National Wild and Scenic Rivers System, designated as Study Rivers under Section 5(a) of the National Wild and Scenic Rivers Act, or listed on the Nationwide Rivers Inventory. Therefore, in accordance with these regulations, prior to issuing permits for the Project, FHWA and USACE must consult with the NPS regarding effects on the Genesee River.
- **Rivers and Harbors Appropriation Act of 1899 (33 USC § 403).** Authorization from the USACE is required for the construction of a structure in a navigable waterway of the United States (Section 10 permit). Authorization is also required from the U.S. Coast Guard for construction in or over a navigable waterway (Section 9 permit). The Genesee River in Letchworth State Park is considered a navigable waterway by USACE but not by the U.S. Coast Guard. In-water work associated with removal of the piers of the existing bridge would require a Section 10 permit from the USACE.

- **Safe, Efficient Use and Preservation of the Navigable Airspace (14 CFR Part 77).** Any construction that is more than 200 feet above the ground at its site is required to provide notice to the Federal Aviation Administration (FAA) not less than 30 days prior to the start of construction or application for a federal construction permit, whichever is earlier. The Portageville Bridge is 245 feet above the floor of the Genesee River gorge and therefore a Form 7460-1 must be filed with the FAA.
- **U.S. Department of Transportation Act—Section 4(f) (49 USC § 303; 23 CFR § 774).** Section 4(f) prohibits the Secretary of Transportation from approving programs or projects that use a property protected under Section 4(f) unless there is no prudent and feasible alternative to the use of such land and the project includes all possible planning to minimize harm to such land. A Section 4(f) property is defined as a publicly owned parkland, recreation area, or wildlife and waterfowl refuge of national, state, or local significance; or land from a historic site of national, state, or local significance, which are properties listed on or eligible for the National Register of Historic Places. FHWA, which falls under the jurisdiction of the Secretary of Transportation, will make a Section 4(f) finding for this Project.
- **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC Chapter 61).** Acquisition of properties using federal assistance must be conducted in accordance with this act, which sets forth procedures related to property owner notification, compensation, and relocation assistance. If NYSDOT undertakes condemnation of the private property needed for construction of the Project, it will follow the requirements of this act and associated regulations.
- **Wetlands (Executive Order 11990 of 1977; USDOT Order 5660.1A, “Preservation of the Nation’s Wetlands,” August 24, 1978).** Federal and state agencies must avoid adverse impacts from the destruction or modification of wetlands unless there is no practical alternative and all possible measures to minimize harm are taken.

State Regulations

- **Acquisition of Abandoned Railroad Property (NYS Transportation Law § 18).** The Commissioner of Transportation of the State of New York shall have a preferential right to acquire any real property that has been abandoned for railroad transportation purposes and no property owner shall dispose of any such property without having first obtained a release of such right from the Commissioner.
- **New York State Wild, Scenic and Recreational Rivers Act (ECL Article 15 Title 27; 6 NYCRR Part 666).** State policy is to preserve designated rivers in a free-flowing condition, protecting them from improvident development and use. The New York State program separately designates rivers as wild, scenic, and/or recreational. The Genesee River in Letchworth State Park is a designated New York State scenic river. NYSDEC regulations govern allowable activities along and in the river and identify which activities require permits from the NYSDEC. However, federal law preempts state and local regulations associated with the Project and therefore this permit is not required. Nonetheless, Norfolk Southern will work with the NYSDEC to address any concerns related to protection of the Genesee River, as appropriate.
- **Protection of Waters (New York State Environmental Conservation Law (ECL) Article 15, Title 5; 6 NYCRR Part 608).** Permits are required from NYSDEC for projects that involve disturbance to surface waters, such as in-water work related to demolition of the existing bridge. However, federal law preempts certain state and local regulations associated with the Project and therefore this permit is not required for the Project. Nonetheless, Norfolk Southern will work with the NYSDEC to address any concerns related to the protection of waters as appropriate.

- **Smart Growth Public Infrastructure Policy Act (ECL Article 6).** State policy is to maximize the social, economic, and environmental benefits from public infrastructure development through minimizing unnecessary costs of sprawl development including environmental degradation, disinvestment in urban and suburban communities, and loss of open space induced by sprawl facilitated by the funding or development of new or expanded transportation, sewer and waste water treatment, water, education, housing and other publicly supported infrastructure. State infrastructure agencies (including NYSDOT) shall not approve, undertake, support, or finance a public infrastructure project, including providing grants, awards, loans or assistance programs, unless, to the extent practicable, the project is consistent with the 10 smart growth criteria set forth in ECL Section 6-0107.
- **State Pollutant Discharge Elimination System (ECL Article 3, Title 3; Article 15; Article 17, Titles 3, 5, 7, and 8; Article 21; Article 70, Title 1; Article 71, Title 19; 6 NYCRR Part 750).** Under Section 402 of the Clean Water Act, stormwater discharges to the waters of the U.S. require authorization by a NPDES permit or an authorized state permit program. New York State has established the SPDES program for controlling wastewater and stormwater discharges to groundwaters and surface waters; the SPDES program is an authorized program under the CWA. SPDES permits are required for projects that involve construction on more than one acre of land or that discharge stormwater or wastewater through point sources.
- **Acquisition of Real Property (NYS Railroad Law § 17).** According to this section of the New York State Railroad Law, all real property required by any railroad corporation for the construction, maintenance, and accommodation of its railroad shall be deemed to be required for a public use and may be acquired by the railroad corporation, including by eminent domain, if required.
- **New York State Eminent Domain Procedures Law.** New York State's Eminent Domain Procedures Law sets forth procedures by which property shall be acquired by exercise of the power of eminent domain in the state, including procedures to be followed related to public outreach and involvement and to establish compensation to be made.

4.1-2-4 Section 106 Coordination

Section 106 of the NHPA (NHPA; 36 CFR Part 800) requires federal agencies to consider the effects of their undertakings on historic properties that are listed in or meet the eligibility criteria for listing in the National Register of Historic Places. Participants in the Section 106 consultation process include the SHPO, the Advisory Council on Historic Preservation (ACHP), federally recognized Tribal Nations, other Consulting Parties, and the public. Individuals and organizations with a demonstrated interest in the Project may participate as Consulting Parties (subject to federal lead agency approval) due to the nature of their legal or economic relationship to the Project or affected historic properties, or their concern with the Project's effects on historic properties.

The previous DEIS included coordinated review with SHPO of potential effects on historic resources under Section 14.09 of the New York State Historic Preservation Act. Previous work efforts have been incorporated, as applicable, into the documentation prepared for the Project to meet the requirements of Section 106.

4.1-2-5 Section 4(f) Coordination

In accordance with 23 CFR § 774.5, FHWA must provide opportunities for coordination and comment to the official(s) with jurisdiction over any Section 4(f) resource that may be affected by the Project as well as to the U.S. Department of the Interior (DOI), and as appropriate, the Department of Agriculture and the Department of Housing and Urban Development. Review of the Section 4(f) Evaluation for this Project will include DOI, OPRHP, and the SHPO. As

described above, potential effects on historic properties are being coordinated through Section 106 of the NHPA, which will be taken into consideration as part of the Section 4(f) evaluation.

4.1-2-6 Section 6(f) Coordination

The DOI, through the NPS, provides funding under the LWCF for state and local efforts to plan, acquire, or develop land to advance outdoor recreational activities. (16 USC § 4601-4) OPRHP serves as the New York State agency that administers LWCF funds received from DOI. When conversion of these properties to a non-recreational use is proposed, the action is subject to conditions of the LWCF Act (commonly referred to as Section 6(f)). When applications to convert Section 6(f) parkland to non-park use are proposed, the state resource agency is responsible for coordination with NPS and for provision of all required application materials. For the Project, OPRHP will coordinate with NPS and will provide to NPS a formal conversion request. The formal conversion request submission will include an LWCF amendment form for Letchworth State Park as well as other documentation.

4.1-2-7 Environmental Justice Coordination

Executive Order 12898 requires federal agencies to involve the public on project issues related to human health and the environment. The U.S. Department of Transportation's "Final Order on Environmental Justice" indicates that project sponsors should create public involvement opportunities to solicit input from affected minority and low-income populations in considering project alternatives. As described in Chapter 4.2.3 of this DEIS, "Social Groups Benefited or Harmed," low-income communities were identified in the Town of Portage and the Town of Genesee Falls. FHWA and NYSDOT will continue public outreach efforts that began during preparation of the previous SEQRA DEIS and continue to engage environmental justice communities, as appropriate, through public notices of public meetings and potentially targeted meetings with town officials and local community groups.

4.1-3 AGENCY COORDINATION

The Project's location and implementation requires coordination with a number of federal and state agencies with jurisdiction over parklands, waterways, and natural, ecological, and historic resources. Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) increased opportunities for federal, state, and local agencies to have active and early involvement in the NEPA process and to provide comments on a project's purpose and need, environmental study methodology, and alternatives under consideration. Section 6002 requires the development of a Coordination Plan for all highway and transit projects for which an EIS is being prepared under NEPA. As such, FHWA and NYSDOT prepared a Coordination Plan that was distributed to federal and state agencies with potential jurisdiction over aspects of the Project. The Coordination Plan described the process and communication methods that will be followed to disseminate information about the Project, as well as to solicit and consider input from the agencies. The Coordination Plan will be in effect throughout the EIS process. The Coordination Plan is a flexible, "living" document that can be amended as needed.

Agencies can be involved as lead, cooperating, or participating agencies, depending on their anticipated role. The responsibility of the lead agency(ies) is to ensure compliance with applicable environmental review processes (e.g., NEPA or SEQRA). As noted above, FHWA and NYSDOT are serving as federal and state lead agencies, respectively, for the Project. A "Cooperating Agency," according to Council on Environmental Quality (CEQ) regulations (40 CFR § 1508.5), means any federal agency, other than a lead agency, that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed project or

project alternative. A state or local agency of similar qualifications or a tribal government, when the effects are in areas of interest for the purpose of Section 106 consultation under the National Historic Preservation Act with a federally recognized Indian tribe, may, by agreement with the lead agencies, also become a Cooperating Agency. CEQ regulations also state (40 CFR § 1501.6) that an agency may request the lead agency to designate it a Cooperating Agency. "Participating Agencies" are those federal, state, or local agencies or federally recognized tribal governmental organizations with an interest in the project. The standard for Participating Agency status is more encompassing than the standard for Cooperating Agency status. Therefore, all Cooperating Agencies are, by definition, Participating Agencies, but not all Participating Agencies are Cooperating Agencies.

Cooperating and Participating Agencies are responsible for identifying, as early as practicable, any issues of concern regarding a project's potential environmental or socioeconomic impacts that could substantially delay or prevent an agency from granting a permit or other approval. FHWA and NYSDOT have identified and invited appropriate federal and state agencies to become Cooperating or Participating Agencies for the Project. Those agencies, and their responsibilities as they pertain to the Project, are summarized in **Table 4.1-1**.

4.1-4 PUBLIC PARTICIPATION

Public participation is a critical component of the NEPA and SEQRA processes, as well as other parallel processes, including Project reviews in accordance with Section 106 of the NHPA and Section 4(f) of the U.S. Department of Transportation Act, discussed above. FHWA, NYSDOT, and Norfolk Southern have engaged and will continue to engage members of the public in the Project's review through various meetings and other forums. Opportunities for public review have included and will include the outreach efforts described below.

- **Public Meetings and Comment Periods.** The public was invited to provide written comments and provide oral comments at a public scoping meeting held on November 19, 2013. The scoping comment period extended through December 19, 2013. In addition, a public comment period has been established for this DEIS. A public hearing will be held during the DEIS comment period. Project documents have been and will continue to be made available on the Project website (see below), with paper copies at a number of locations near the Project site (such as municipal offices and libraries). Comments raised at the public hearing and during the DEIS comment period will be responded to, as appropriate, in the FEIS/ROD.
- **Citizens' Advisory Committee.** NYSDOT and Norfolk Southern formed a Citizens' Advisory Committee (CAC) in 2009 to provide information about the Project as planning and design progressed and to solicit comments from stakeholders, including involved and interested agencies and members of the public, to guide the Project's development, in addition to comments solicited during the SEQRA process. Approximately 200 individuals were invited to participate in the CAC, and 39 individuals chose to actively participate. These individuals represent federal, state, and local governmental agencies; business, community, and environmental groups and organizations; local land and business owners; elected officials; and area residents, including park patrons. NYSDOT and Norfolk Southern hosted two CAC meetings prior to completion of the SEQRA DEIS. Members of the CAC will be invited to all public meetings held for the NEPA phase of the Project.
- **Other Stakeholder Outreach.** During the course of the Project, NYSDOT, FHWA, and Norfolk Southern will continue to coordinate with various stakeholders to present Project information and to solicit comments and questions. This outreach includes meetings with federal, state, and local agencies, elected officials, and business and community groups.

Table 4.1-1
Lead and Invited Cooperating and Participating Agencies

Agency	Role	Responsibilities
Federal Highway Administration (FHWA)	Federal Lead Agency	Manage environmental review process; prepare EIS and decision document; provide opportunity for public and agency involvement; arbitrate and resolve issues
New York State Department of Transportation (NYSDOT)	State Lead Agency	Manage environmental review process; prepare EIS and decision document; provide opportunity for public and agency involvement; arbitrate and resolve issues
Advisory Council on Historic Preservation	Cooperating Agency	Section 106, National Historic Preservation Act
U.S. Army Corps of Engineers (USACE)	Cooperating Agency	Section 404, Clean Water Act permit Section 10, Rivers and Harbors Act permit
U.S. Department of Interior (DOI)	Cooperating Agency	Section 4(f), U.S. Department of Transportation Act
U.S. Department of Interior, National Park Service (NPS)	Cooperating Agency	Section 6(f), Land and Water Conservation Fund Act approval Section 7, National Wild and Scenic Rivers Act and Genesee River Protection Act approvals
U.S. Environmental Protection Agency (USEPA)	Cooperating Agency	Section 309, Clean Air Act Section 404, Clean Water Act National Environmental Policy Act
U.S. Fish and Wildlife Service (USFWS)	Cooperating Agency	Section 7, Endangered Species Act Bald and Golden Eagle Protection Act permit
New York State Department of Environmental Conservation (NYSDEC)	Cooperating Agency	Section 401 Certification, Clean Water Act State Pollutant Discharge Elimination System (SPDES) for construction activities Section 7, National Wild and Scenic Rivers Act and Genesee River Protection Act consultation
State Historic Preservation Officer (SHPO)	Cooperating Agency	Section 106 Consultation, National Historic Preservation Act Section 4(f), U.S. Department of Transportation Act
New York State Office of Parks, Recreation and Historic Preservation (OPRHP)	Cooperating Agency	Section 6(f), Land and Water Conservation Fund Act Section 4(f), U.S. Department of Transportation Act Construction clearances and approval of improvements within Letchworth State Park
Federal Railroad Administration (FRA)	Cooperating Agency	Consultation
Surface Transportation Board	Participating Agency	Consultation
Genesee Transportation Council	Participating Agency	Consultation
Livingston County	Participating Agency	Consultation
Wyoming County	Participating Agency	Consultation
Town of Genesee Falls	Participating Agency	Consultation
Town of Portage	Participating Agency	Consultation

- **Project Website.** A Project website (www.dot.ny.gov/portagevillebridge) has been established to provide information to the public about the Project. The website was established at initiation of the project's SEQRA review in 2008 and has been maintained since that time. The site has been and will continue to be updated regularly to include announcements of Project meetings and access to Project documents (i.e., scoping documents and the EIS), which have been posted as they become available.
- **New York State Smart Growth Public Infrastructure Act.** The Smart Growth Act requires New York State infrastructure entities, including NYSDOT, to solicit input from and consult with various representatives of affected communities and organizations within those communities and to give consideration to the local and environmental interests affected by public infrastructure projects. The public outreach conducted and planned in accordance with NEPA and SEQRA, Section 106, and Section 4(f) will satisfy the public outreach requirements of the Smart Growth Act.

4.1-5 CONTACT INFORMATION

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